

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

EARL PARRIS, JR., Individually,)
and on Behalf of a Class of Persons)
Similarly Situated,)

Plaintiff,)

City of SUMMERVILLE,)
GEORGIA,)

Intervenor-Plaintiff,)

vs.) Case No.: 4:21-cv-00040-TWT

3M COMPANY, DAIKIN) **TRIAL BY JURY REQUESTED**

AMERICA, INC., HUNTSMAN)

INTERNATIONAL, LLC, PULCRA)

CHEMICALS, LLC, MOUNT)

VERNON MILLS, INC., TOWN OF)

TRION, GEORGIA, RYAN)

DEJUAN JARRETT, E.I.)

DUPONT DE NEMOURS AND)

COMPANY, and THE CHEMOURS)

COMPANY,)

Defendants.)

BRIEF IN SUPPORT OF CONSENTED TO CITY OF SUMMERVILLE'S
MOTION FOR LEAVE TO REFILE ITS AMENDED COMPLAINT
IN INTERVENTION

Pursuant to Federal Rules of Civil Procedure 15 and 16, Intervenor-Plaintiff
the City of Summerville, Georgia (“Summerville”) respectfully submits this Brief in

Support of Summerville’s Motion for Leave to Refile its Amended Complaint in Intervention (“Motion for Leave”). Summerville shows as follows:

Background

This lawsuit was initiated by Plaintiff Earl Parris, Jr. against 3M Company, Daikin America, Inc., Huntsman International, LLC, Pulcra Chemicals, LLC, Mount Vernon Mills, Inc., Town of Trion, Georgia, and Ryan Dejuan Jarrett. (Compl. (Doc. 1).) Later, Summerville intervened and filed its Complaint in Intervention, (doc. 137).

The Court’s Scheduling Order, (doc. 187), set a deadline of November 21, 2022, for parties to amend pleadings and add parties. On November 21, 2022, Plaintiff filed his Second Amended Individual and Class Action Complaint (the “Second Amended Complaint”), (doc. 280). The Second Amended Complaint added E.I. DuPont de Nemours and Company and The Chemours Company (“DuPont and Chemours”) as defendants and stated additional allegations against the other Defendants. *Id.*

Also on November 21, Summerville filed its Joinder in Plaintiff’s Second Amended Complaint (“Summerville’s Joinder”), (doc. 281). Summerville’s Joinder stated that it was, pursuant to Local Rule 15.1, adding DuPont and Chemours as new parties and adopting and incorporating relevant provisions Plaintiff’s Second

Amended Complaint into its Complaint in Intervention. *Id.* Defendants Daikin America, Inc. (“Daikin”) and Mount Vernon Mills, Inc. (“Mount Vernon”) responded to Summerville’s Joinder as if it were a pleading. *See* Daikin’s Answer to Second Amended Complaint and Joinder (Doc. 292); Response of Defendant Mount Vernon to Summerville’s Joinder (Doc. 293). Defendant 3M Company (“3M”) filed a Motion for More Definite Statement, (doc. 294), on December 5, 2022.

On January 6, 2023, Summerville filed its Response to 3M’s Motion for More Definite Statement, (doc. 301), and attached its Amended Complaint in Intervention, (doc. 301-1). 3M withdrew its Motion for More Definite Statement, (doc. 322) on January 27, 2023. DuPont and Chemours filed a Motion to Strike Summerville’s Joinder and the Amended Complaint in Intervention (“Motion to Strike”), (doc. 339), on February 7, 2023. After discussions between counsel for Dupont and Chemours and Summerville, DuPont and Chemours agreed to withdraw its Motion to Strike and consented to Summerville refiling the Amended Complaint in Intervention. The Motion to Strike prompted Summerville to contemporaneously file a response to that motion and this Motion for Leave.

Argument

A. “Good Cause” Exist for the Court to Evaluate this Motion.

On May 24, 2022, the Court’s Scheduling Order, (Doc. 187), set a deadline of November 21, 2022, for parties to amend pleadings and add parties. “It is well established in the Eleventh Circuit that when a motion to amend is filed after the scheduling order’s deadline, a party must show good cause under [Federal Rule of Civil Procedure] 16(b) before the Court considers whether the amendment is appropriate under Rule 15.” *Orr v. Orbis Corp.*, No. 1:07-CV-2653-TWT-SSC, 2009 WL 10669722, at *3 (N.D. Ga. Jan. 22, 2009).

Here, good cause exists because Summerville believed that it had Amended its Complaint in Intervention prior to the scheduling order’s deadline pursuant to Local Rule 15.1 by “incorporating relevant provisions of prior pleadings by reference” through Summerville’s Joinder. LR 15.1 NDGa. This belief was affirmed by other defendants’ responses to Summerville’s Joinder as a pleading. *See* Daikin’s Answer to Second Amended Complaint and Joinder (Doc. 292); Response of Mount Vernon to Summerville’s Joinder (Doc. 293); 3M’s Motion for More Definite Statement (Doc. 294). Summerville’s belief that it had amended its Complaint in Intervention was unquestioned until a few days ago when DuPont and Chemours filed their Motion to Strike. DuPont and Chemours have now consented to Summerville’s refile of its Amended Complaint in Intervention. *See* Ex. A, Summerville and DuPont and Chemours Consent for Summerville to Refile its Amended Complaint

and Withdrawal of Motion to Strike; *see also Milbank Ins. Co. v. Gree USA, Inc.*, No. 4:21-CV-04180-RAL, 2022 WL 2802773, at *1 (D.S.D. July 18, 2022) (finding good cause, at least partially, because opposing party consented to amendment of pleading); *Nelson v. Int'l Paper Co.*, No. 18-CV-131 (SRN/LIB), 2019 WL 10960398, at *2 (D. Minn. Jan. 22, 2019) (same).

Now, within days after its previous filing was questioned, Summerville is diligently seeking to refile its Amended Complaint in Intervention to remove any doubt that it was properly before this Court.

B. Leave Should be Granted Because the Opposing Parties have Consented to the Refiling of the Amended Complaint in Intervention.

Rule 15 states that after the period for amending a pleading as a matter of course has expired “a party may amend its pleading only with opposing party’s written consent or the court’s leave.” FED. R. CIV. PRO. 15(a)(b). Here, opposing parties DuPont and Chemours have consented to Summerville’s attempt to refile its Amended Complaint in Intervention. Therefore, Summerville should be granted to leave to refile its Amended Complaint in Intervention.

CONCLUSION

Summerville requests this Court to grant it leave to refile its Amended Complaint in Intervention because good cause exist and because the opposing parties consent to this refiling.

Respectfully submitted this the 15th day of February, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Northern District of Georgia Civil Local Rule 7.1.D., the undersigned counsel certifies that the foregoing filing is prepared in Times New Roman 14-point font, as mandated in Local Rule 5.1.C.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Brief in Support of Consented to City of Summerville's Motion for Leave to File an Amended Complaint in Intervention* has been filed electronically with the Clerk of Court by using the CM/ECF system which will automatically email all counsel of record on this 15th day of February, 2023.

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